

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT L. DYKES #201541,

Plaintiff,

Case No. 1:14-cv-1167

v

Hon. Ray Kent

N. MARSHALL,

Defendant.

_____ /

FINAL PRETRIAL ORDER

The final pretrial conference was held on August 10, 2018 . Appearing for the parties as counsel were: Robert L. Dykes, plaintiff *in pro per*, and Michael R. Dean for defendant.

1. Exhibits:

Plaintiff's Exhibits:

- A. Exhibit 00: P.D. (Policy Directive) 03.02.130, Prisoner/Parolee Grievances
- B. Exhibit 1: Grievances wrote on Food Service Officials S. Jones and Meadows. *Defendants object to this exhibit on the grounds that it is hearsay and not within an applicable exception.*
Objection SUSTAINED. Exhibit 1 will be addressed in a stipulation presented by the parties.
- C. Exhibit 2: Grievances wrote on Food Service Officials S. Jones and Meadows for retaliation. *Defendants object to this exhibit on the grounds that it is hearsay and not within an applicable exception.*
Objection SUSTAINED. Exhibit 2 will be addressed in a stipulation presented by the parties.
- D. Exhibit 3: Grievances wrote on Food Service Official D. North. *Defendants object to this exhibit on the grounds that it is hearsay and not within an applicable exception.*
Objection SUSTAINED. Exhibit 3 will be addressed in a stipulation presented by the parties.

- E. Exhibit 4: Grievance filed against Food Service Official D. North. *Defendants object to this exhibit on the grounds that it is hearsay and not within an applicable exception.*
Objection SUSTAINED. Exhibit 4 will be addressed in a stipulation presented by the parties.
- F. Exhibit 5: Orientation Manual for RMI Food Service Workers.
- G. Exhibit 6: Food Service Disciplinary Tracking Sheet.
- H. Exhibit 7: Lay In Notice, produce by D. North. *Defendants object to this exhibit on the grounds that it is hearsay and not within an applicable exception.*
Objection OVERRULED.
- I. Exhibit 8: “Prisoner Program and Work Assignment Evaluation” (CSJ-363).
- J. Exhibit 9: Program Classification Report; “Memorandum”; and handwritten statement by prisoner Johnson #791359. *Defendants object to this exhibit on the grounds that it is hearsay and not within an applicable exception.*
Objection SUSTAINED as to page 3 of Exhibit 9. Objection OVERRULED as to the remainder of the exhibit.
- K. Exhibit 10: Affidavit of Nancy Marshall.
- L. Exhibit 11: Prisoner Program Classification.
- M. Exhibit 12: Grievance wrote on Defendant Marshall. *Defendants object to this exhibit on the grounds that it is hearsay and not within an applicable exception.*
Objection OVERRULED.
- N. Exhibit 13: Program Classification Report.
- O. Exhibit 14: Grievance wrote against Defendant Marshall. *Defendants object to this exhibit on the grounds that it is hearsay and not within an applicable exception.*
Objection SUSTAINED. Exhibit 14 will be addressed in a stipulation presented by the parties.
- P. Exhibit 15: Prisoner Kite to Defendant Marshall; Memorandum from Defendant Marshall; Kite to ARUS Rogers. *Defendants object to this exhibit on the grounds that it is hearsay and not within an applicable exception.*
Objection OVERRULED.

Q. Exhibit 16: Grievance wrote against Defendant Marshall. *Defendants object to this exhibit on the grounds that it is hearsay and not within an applicable exception.*

Objection SUSTAINED. Exhibit 16 will be addressed in a stipulation presented by the parties.

R. **Exhibit 17: Defendant's counsel agrees to add the policy directive for prisoner access to the courts.**

Defendant's Exhibits

A. Exhibit A: June 2, 2014 Memorandum

B. Exhibit B: Program Classification Report

C. Exhibit C: Prisoner Program and Work Assignment Evaluation

D. Exhibit D: Food Service Disciplinary Tracking Sheet

E. Exhibit E: Letter from Dykes to Robinson

F. Exhibit F: Lay In Notice

Duplicative. Defendant may rely on plaintiff's copy of Exhibit 7.

G. Exhibit G: Letter from Plaintiff

H. Exhibit H: May 20, 2014 Correspondence

I. Exhibit I: May 15, 2014 Letter from Plaintiff to Food Service

J. Exhibit J: May 22, 2014 Letters from Kurr

K. Exhibit K: May 17, 2014 Letter from Plaintiff

L. Exhibit L: August 30, 2013 Prisoner Program and Work Assignment Eval.
STRICKEN. Defendant does not intend to present Exhibit L.

M. Exhibit M: January 23, 2014 Prisoner Program and Work Assignment Eval.
STRICKEN. Defendant does not intend to present Exhibit M.

Consistent with this order, Plaintiff's Exhibits 00, 5, 6, 7, 8, 9 (except for page 3), 10, 11, 12, 13, 15, 17, and Defendant's Exhibits A, B, C, D, E, G, H, I, J, and K are deemed ADMITTED for trial. The parties shall pre-mark each of the exhibits into an exhibit notebook. Defendant shall provide five copies of the

exhibit notebook shall be provided to the Court on the first day of trial. Any other exhibits shall be placed in the exhibit notebook when admitted into evidence.

2. Uncontroverted Facts:

- A. Defendant was acting under color of law at all times relevant to the complaint.
- B. Plaintiff was a prisoner under the custody of the Michigan Department of Corrections at all times relevant to the complaint.

3. Controverted Facts and Unresolved Issues:

- A. Whether defendant violated plaintiff's First Amendment rights by retaliating against him for engaging in protected conduct.

4. Witnesses:

Plaintiff's Witnesses:

- A. Robert Dykes #201541

Defendant's Witnesses:

- A. Defendant Nancy Marshall (WILL CALL)
- B. Stephen Jones (MAY CALL)
- C. Any witnesses who are called and testify for plaintiff.

5. Depositions and Other Discovery Documents:

Plaintiff's deposition was taken which may be used for impeachment purposes.

6. Length of Trial:

Two days.

7. Prospects of Settlement: There is no possibility for settlement in this case.

IT IS SO ORDERED.

Dated: August 15, 2018

/s/ Ray Kent

RAY KENT

United States Magistrate Judge